



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903

(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 3, 2016

PR 16-21

Mr. Bob Plain

Re: Plain v. Office of the Governor

Dear Mr. Plain:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Office of the Governor ("the Office") is complete.

On April 13, 2016, you made an APRA request to the Office seeking:

"all documents, memos, emails and other public documents relating to Goldman Sachs and the state's effort to implement the 10,000 Small Businesses program in Rhode Island."

The Office responded to your April 13, 2016 APRA request on April 26, 2016. In its response the Office asserted an extension, stating:

"The Governor's Office has several pending APRA requests and many of them are extremely broad, requiring review of thousands of documents. Therefore, pursuant to R.I. Gen. Laws §§ 38-2-7(b) and 38-2-3(e), the time period in which a public body is required to respond to an APRA request requires extension of an additional twenty (20) business days."

On this same date, April 26, 2016, you filed the instant APRA complaint, alleging that the Office's extension was without "good cause" and violated the APRA. In particular, you wrote:

"I fully appreciate that the governor's office is busy, but I don't think that is sufficient reason for an extension. This should be a very simple APRA request to comply with and certainly the public's right to know about this public-private partnership in a timely manner far outweighs the governor's office to take its time in fulfilling a request for as much."

In response to your complaint, this Department received an affidavit from Andrea M. Iannazzi, Esquire, Special Counsel, for the Office. As explained by Ms. Iannazzi, in relevant part “[f]rom the date of Mr. Plain’s original APRA request, the Office had nine other pending APRA requests with thousands of pages of documents to compile and review for certain requests.” Ms. Iannazzi further related that while your APRA request was pending, the Office “experienced an unusually high volume of APRA requests.” As an example, and by comparison, Ms. Iannazzi related that in 2015, the Office received thirty-nine APRA requests, compared with “twenty-six APRA requests for 2016 thus far.” Ms. Iannazzi adds that fourteen APRA requests were pending in April and May 2016. Based upon the “unusually high volume of pending APRA requests and the voluminous nature of certain of these requests satisfies the good cause requirement for the twenty day extension under R.I. Gen. Laws §§ 38-2-3(e) and 38-2-7(b).”

You did not provide a rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Office violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Rhode Island General Laws § 38-2-3 (e) provides in full:

“[a] public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body. (Emphasis added)

Here, we find no violation. While your complaint acknowledges your “apprecia[tion] that the governor’s office is busy,” you nonetheless claim that this asserted reason is not a sufficient reason for an extension under the APRA. Notwithstanding the Office’s Affidavit, which arguably by itself demonstrates “good cause” that you have not rebutted, the Office supplied this Department with nine other APRA requests pending during the timeframe of your April 13, 2016 APRA request. Based upon the evidence presented, seven of these APRA requests were pending

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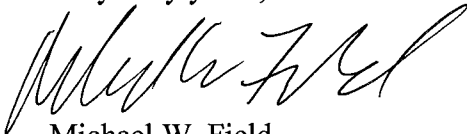
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before your April 13, 2016 APRA request was made to the Office. While it is unnecessary to provide the details of these seven APRA requests, in an attempt to place the seven APRA requests into context, we note that one of these APRA requests sought “access to and copies of all records since Jan. 1, 2011, related in any way to Deloitte and/or Deloitte Consulting,” and three other APRA requests concerned the State’s tourism and branding campaign. The three APRA requests related to this latter subject-matter all appear to be quite voluminous – one sought four categories of records, another sought information pertaining to nineteen categories, and another sought records relating to one category, “all emails from the Governor’s office relating to the production and launch of the state’s new \$5 million tourism campaign.” Two other APRA requests were made to the Office on April 21, 2016 and April 25, 2016. Based upon the evidence presented, we find no violation.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8 (b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Field", written in a cursive style.

Michael W. Field
Assistant Attorney General

MWF/kr

Cc: Claire Richards, Esq.